

Application/Control Number: 10/784,416  
Art Unit: 3733  
Office Action Dated: 12-01-2006

#### REMARKS

The abstract has been amended to remove "implied language". Accordingly, no new matter is involved. Claim 1 has been amended to put back the inadvertently omitted word "shape". Accordingly, no new matter is involved. Claims 1, 7 and 10 have been further amended to state that when the device is in its deployed shape the band portion has a substantially linear cross section along a majority of its longitudinal axis. Support for this can be found in paragraph 23, and in the drawings. Accordingly, no new matter is involved.

In the previous office action, the Examiner objected to the specification stating that the abstract included "implied language". As noted above, this has been corrected. Accordingly, it is respectfully requested that the Examiner withdraw the objection to the specification.

Also, in the previous office action, the Examiner objected to claim 1 because it appeared that the word "shape" was omitted from line 1 of claim 7. As noted above, this has been corrected. Accordingly, it is respectfully requested that the Examiner withdraw the objection to claim 1.

Lastly, in the previous office action the Examiner rejected Applicant's claims under 35 U.S.C. 103 as being unpatentable over Hallberg. The Examiner takes the position that Hallberg discloses the claimed invention "except wherein the device is in its undeployed shape the band portion has a concave cross section along a majority of its longitudinal axis, taken perpendicular to the longitudinal axis". The Examiner takes the position that the particular shape of the band is an obvious matter of design choice.

Applicant respectfully disagrees. MPEP 706.02(j) states:

To establish a *prima facie* case of obviousness, three basic criteria must be met. First, there must be some suggestion or motivation, either in the references themselves or in the knowledge generally available to one of ordinary skill in the art, to modify the reference or to combine reference teachings. Second, there must be a reasonable expectation of success. Finally, the prior art reference (or references when combined) must teach or suggest all the claim limitations. The teaching or suggestion to make the claimed combination and the reasonable expectation of success must both be found in the prior art and not based on

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applicant's disclosure. *In re Vaack*, 947 F.2d 488, 20 USPQ2d 1438 (Fed. Cir. 1991). See MPEP § 2143 - § 2143.03 for decisions pertinent to each of these criteria.

The initial burden is on the examiner to provide some suggestion of the desirability of doing what the inventor has done. "To support the conclusion that the claimed invention is directed to obvious subject matter, either the references must expressly or impliedly suggest the claimed invention or the examiner must present a convincing line of reasoning as to why the artisan would have found the claimed invention to have been obvious in light of the teachings of the references." *Ex parte Clapp*, 227 USPQ 972, 973 (Bd. Pat. App. & Inter. 1985). See MPEP § 2144 - § 2144.09 for examples of reasoning supporting obviousness rejections.

Applicants submit that Hallberg neither teaches or suggests a device with an undepolyed position wherein the band portion has a concave cross section along a majority of its longitudinal axis, taken perpendicular to the longitudinal axis. Hallberg neither expressly or impliedly suggests this limitation as required by the above section.

However, in the previous office action, the Examiner goes on to state that the intended use of the device provides no structural limitations to the claims to distinguish them over Hallberg. As noted above, Applicant's have amended the independent claims to state that the device has a deployed shape wherein the band portion has a substantially linear cross section along a majority of its longitudinal axis.

Therefore, Applicant submits that all claims are now fully allowable over the prior art cited by the Examiner. Therefore, Applicant respectfully requests that the Examiner re-examine and favorably reconsider Applicants' claims in the form of a Notice of Allowance.

Respectfully submitted,

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Date: 27 March 2007